

No. 12371

Supreme Court of Illinois

Ready.

vs.

Bradley, et al.

71641  7

State of Illinois }
Cook County } S.S.

Hear before the Honorable
Buckner S. Morris Judge of the Seventh Judicial Circuit
Court and presiding Judge of the Circuit Court of the
County of Cook in the State of Illinois at a term
thereof begun and held at Chicago in said County on
this Monday being the twenty first day of November
in the year Eighteen hundred and fifty three, and
of the independence of the United States the seventy
Eighth.

Present

Hon. Buckner S. Morris Judge

Daniel M. Flory State attorney

Cyrus P. Bradley Sheriff

Attest Louis D. Howard Clerk

Be it remembered that heretofore to wit, on the nineteenth
day of October in the year of our Lord one thousand
eight hundred and fifty three, there was filed in the
office of the clerk of the Circuit Court of Cook County in
said State, a certain bond for costs, which is in the
words and figures following, to wit;

Cook County Circuit Court.

Daniel W. Reed

vs

Cyrus P. Bradley &

John H. Norton

I do hereby enter myself security
for costs in this cause and acknowledge myself ^{bound} to
pay or cause to be paid, all costs which may accrue
in this action either to the opposite party or to any of the
officers of this court in pursuance of the laws of this

State

Henry G. Miller

dates this 19th day of
October A.D. 1853.

Approves 19th October
1853. L. D. Hoard

And afterwards to wit on the day and
year last aforesaid, a certain affidavit was made and
filed in the Clerk's office aforesaid, which is in the words and
figures following to wit;

State of Illinois

Cook County I.S.S. George Allen being duly sworn
deposes and says that he is the agent of James H.
Reed - that the said James H. Reed is justly lawfully
entitled to the possession of the following described
personally property to wit: one desk, one Register, one
Relay, one Telegraph Key - one round table one stove
and pipe - two chairs, one stool, one Telegraph -
Battery, one tin box called Post office delivery, all
of the Telegraph poles and wires in the County of
Cook and attached to the office of known as the
Southern Michigan Telegraph office in the city of
Chicago in said County of great value to wit:
of, the value of one ^{about} thousand dollars. That in or
about the seventeenth day of October A.D. 1853
Cyrus P. ^{Shurtz of said County} Bradley & John W. Norton his deputy
wrongfully took said property from the said James H.
Reed - and that the same has not been taken
for any tax or payment or fine levied by virtue
of any law of this State nor seized under any
execution or attachment against the goods and
chattels of the said James H. Reed liable to execution
or attachment & deponent prays that a writ

of Replevin may issue, directed to the coroner
of said County, for the recovery of said property
as by the statute in such case made and provided,
Shewn to before me George Allen
this 19th day of October 1853.

L. D. Houlden

And afterwards to wit on the day a year last
aforesaid, there issued out of the office of the clerk of
our said Circuit Court the Peoples writ of Replevin directed
to the Coroner of said County, clothed in the words and figures
following, to wit;

State of Illinois;

County of Cook } S.S. The People of the State of
of Illinois to the Coroner of said County - Greeting;

Whereas George Allen agent of James H. Reed
Plaintiff complains that Cyrus P. Bradley & John
H. Norton Defendants unlawfully and wrongfully has
taken and does detain the following described goods and
chattels, to wit; One Desk, One Register, one Relay,
one Telegraph Key, ~~one~~ Round Table, one Stove
and Pipe, two chairs, one Stool, one Telegraph Buttons
one ~~Iron~~ Box called Post Office delivery, all of the
Telegraph Pole and wires in the County of Cook
and attached to the office known as the Southern Michigan
Telegraph office, of the value of about one thousand
dollars.

Therefore we command you, That if the said
Plaintiff shall give you bond with good and sufficient
security in double the value of the said goods & chattels
as required by law, to prosecute his suit in this behalf to
effect and without delay, and to make return of the said
goods and chattels, if return thereof shall be awarded,
and to save and keep you harmless in replevying

said goods and chattels, you cause the said goods and
chattels to be replevied and delivered to the said plaintiff
without delay; and also that you summon the said
defendant to be and appear before the Circuit Court for
said County, on the first day of the next trial term thereof,
to be holden at the City of Chicago, in said County, on the
third Monday of November next, to answer said plaintiff
in the premises. And you have then and there
this writ with an endorsement thereon in what
manner you have executed the same, together with
the bond which you shall have taken from said
plaintiff as before commanded before executing
this writ.

Witness Louis D. Howard, Clerk of our
said Court and the seal thereof at Chicago in said
County, the 19th day of October AD 1853
L. D. Howard Clerk

And afterwards to wit on the twenty second day of
October in the year last aforesaid, the said Coroner
returned to the Clerk's office aforesaid the said writ, with
an endorsement thereon in the words & figures following to
wit:

Served by reading to the within John A. Arton
and Cyrus P. Bradley the 22nd day of October 1853, and
delivered the within describes property to James H. Reed
this 22nd Oct. 1853 as per his receipt Endorsed thereon.
Replevin writ .50 Two services \$1.00 Two miles .10 Return
10. Taking bond \$1.00 \$2.70 Austin Hynes Coroner of Cook
County.

Returned with said writ was a bond in the
following words to wit:—

Know all men by these presents, That we
are held and firmly bound unto Austin Hynes
Coroner of the County of Cook in the State of

Illinois, and to his successors in office, executors, administrators and assigns, in the penal sum of Two Thousand dollars, lawful money of the United States for the payment of which sum we do hereby jointly and severally bind ourselves, our heirs, executors and administrators,

The condition of this obligation is such that whereas, on the 19th day of October in the year of our Lord one thousand eight hundred and fifty three, the said James H. Reed sued out of the Circuit Court Court of Cook County, a writ of Replevin against Cyrus P. Brady Sheriff of Cook County, & John A. Norton his Deputy defendants for the recovery of the following described goods and Chattle, property, to wit: one desk, one Register, one Relay, one Telegraph Key, one Round table, one stove & pipe, two chairs one stool, one Telegraph Battery, one tin box called Post office delivery - all of the Telegraph poles & wires in the count of Cook and attached to the office of the known at the office of the Southern Michigan Telegraph Company in the city of Chicago in said County

Now if the said James H. Reed plaintiff shall prosecute his suit to effect, and without delay, and make return of the said property, if Return there of shall be awarded and save and keep himself the said Sheriff in replevining the said property, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands & seals this 19th day of October A.D. 1853.

James H. Reed Seal
by Geo Allen atty in fact
Henry G. Smith Seal
Mark Skinner Seal

also afterward on the 19th day of October A.D. 1853, the said plaintiff by Haynes & Miller his
attorneys comes files in said clerk's office his certain declaration in the words & figures following to wit:

Cook County Sheriff's Court,
Of the November Term A.D. 1853.

State of Illinois,
Cook County, ssd.

Leysen P. Bradley Sheriff
of said County, & John W. Norton his Deputy, are
summoning to answer James H. Reed of a plea
wherein he took one desk, one Register, one
Relay, one Telegraph Key, one Round table,
one Stove & pipe, two Chairs, one Stool, one
Telegraph Battery, one tin box called post office
delivering, all of the telegraph poles & wires in
the County of Cook and attached to the office
known as the Southern Michigan Telegraph
office in the City of Chicago from the said
plaintiff.

And thereupon the said James H. Reed
plaintiff by Haynes & Miller his attorneys
complains for that the said Leysen P. Bradley
Sheriff as aforesaid and John W. Norton
his Deputy, heretofore to wit, on the seventeenth
day of October A.D. 1853 in the City of Chicago in
the County of Cook aforesaid in a certain building
known as number fifty three Clarke Street
in said City took one desk, one Register, one
Relay, one telegraph Key, one round table,
one Stove & pipe, two Chairs, one Stool, one
telegraph Battery, one tin box called post office
delivering, all of the poles & wires in the County
of Cook and attached to the office known
as the Southern Michigan telegraph office
in said City in the City of Chicago from
the said plaintiff and of which the said
plaintiff was then and there is now law

fully entitled to the possession of great value to wit. of the value of one thousand dollars - and unjustly detained the same against sureties & pledges until &c -

Wherefore the said plaintiff saith that he is injured and hath sustained damages to the amount of one thousand dollars and therefore he brings this suit &c -

Hoynes & Miller Plffs attys

And afterwards to wit on the 28th day of November A.D. 1883, came the said defendants by their attorneys and file their plea herein to the plaintiffs declaration which is in the words of figures following to wit -

In the Circuit Court of Cook County
Of the Amount Due One thousand eight hundred & fifty three

Lyons P. T. Bradley
and John A. Boston

ads

James H. Reed

And the said Lyons P. T. Bradley and John A. Boston by Miller and Fowler their attorneys come and defend &c when &c and say that they did not take the said one Desk, one Register, one Relay, one Telegraph Key, one Round Table, one Stone and pipe, Iron Chair and one stool, one Telegraph Battery, one Tin Box called post office delivery, all of the Telegraph poles and wires in the County of Cook and attached to the office known as the Southern Michigan Telegraph office in the City of Chicago in the declaration aforesaid above mentioned in manner and form as the plaintiff above against them back,

declared, and of this they put themselves upon the Country.

And the said Cyrus P. Bradley and John A. Norton further come and defend &c when &c. and say that the said plaintiff ought not to have and maintain his aforesaid action thereof against the said defendants, because they say that at the time when the taking of the aforesaid goods is supposed to be, the property of the same goods and chattels was in the Southern Michigan Telegraph Company, to-wit. at Chicago in the County of Cook.

And this the said defendants are ready to verify. Wherefore they pray Judgment if the said plaintiff ought to have or maintain his ^{afore} said action thereof against them.

And the said defendants avow the taking of the goods and chattels aforesaid, and that justly, because they say that the said Cyrus P. Bradley being then and ever since Sheriff of the County of Cook, and the said John A. Norton being then and ever since a deputy Sheriff as aforesaid, and by virtue of a certain writ of attachment, ^{issued} out by one Julius G. Lombard against the said Southern Michigan Telegraph Company returnable to the Circuit Court of Cook County, holden at Chicago in and for said County of Cook on the third Monday of November A.D. 1853, that the said Cyrus P. Bradley and John A. Norton did attach and take the said goods and chattels as the goods of the said Southern Michigan Telegraph Company viz. at Chicago aforesaid on the seventeenth day of October A.D. 1853

as they the said Cyrus P. Bradley and John
H. Boston lawfully might do, by virtue of said
writ sued out by the said Julius G. Sumbard
as aforesaid. And afterwards of the same
writ and their doings thereon said Cyrus P.
Bradley and John H. Boston made return
to the same Court to wit on the
day of November A.D. 1853,

Wherefore they pray judgment and a
return of the said goods and chattels to be
adjudged to them and for their damages
and costs. Miller & Fowler Defts attys.

And afterwards, to wit on the 9th day of Decem-
ber A.D. 1853 comes the said plaintiff by his attornies
and files herein his replication and demurrer to
the said defendants plea heretofore filed herein
which is in the words and figures following viz:

Cook County, Illinois Court.
Of the November Term A.D. 1853

JAMES H. REED

vs
Cyrus P. Bradley &
John H. Boston

And the said Plaintiff as
to the Plea of the said defendants by them first
above pleaded and whereof they have put them-
selves upon the Country doth the like

Hogge & Miller Plffs. attys.

And the said plaintiff as to the said plea
of the said defendants by them secondly above
pleaded, saith that the same and the matters
therein contained in manner and form as the

same are above pleaded, and set forth are not sufficient in law, to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against the said defendant and that he the said plaintiff is not bound by law to answer the same, and this the said plaintiff is ready to verify wherefore by reason of the insufficiency of the said plea in this behalf the said plaintiff prays judgment and his damages by reason of the taking and unrightfully detaining the said goods and chattels to be adjudged to him &c —

And the said plaintiff according to the form of the Statute in such case made & provided states and shews to the Court here —

The following causes of demurrer to the said second plea, that is to say the said plea does not deny that the said plaintiff was entitled to the possession of the said goods & chattels in the said declaration mentioned at the said time when &c

and also that the said second plea is in other respects uncertain, informal and insufficient &c
Hoyne & Miller Plffs, atty,

And the said plaintiff saith that the said avowry of the said defendants and the matter therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law for the said defendants to avow or acknowledge the taking of the said goods and chattels in the said declaration above mentioned, ^{on the} said plea in which &c. to be just, and that the said plaintiff is not bound in law to answer the same, and this the said plaintiff is ready to verify, therefore he prays judgment and

his damages by reason of the taking and unjustly
detaining of the said goods and chattels, to be
adjudged to him &c. And the said plaintiff
according to the form of the statute in such case
made and provided states and shows to the court here,
the following causes of demurrer to the said answer
that is to say the said answer does not deny that
the said plaintiff, was entitled to the possession of
the said goods and chattels in the said declar-
ation above mentioned at the said time when
&c. nor does the same aver that the said
goods and chattels were at the same time
when &c the goods & chattels of the Southern
Michigan Telegraph Company, and also that
the said answer is in other respects uncertain
informed and insufficient &c

Hoyne & Miller Plffs Attys.

And afterwards, To wit:—on the twenty eighth day of March
in the year of our Lord one thousand eight hundred and
fifty four, the same being one of the days of the
March vacation term of our said Circuit Court, the following
among other proceedings were had and entered of record
in this cause, to wit;

James H. Reed

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Leyson P. Bradley &
John W. Norton

This day again came the said
parties by their attorneys and the court having heard the
arguments of counsel upon the demurrer of the said
plaintiff to the Pleas of the said defendants order that
the same be sustained as to the second and third pleas,
and that the said defendants have leave to amend.

And afterwards to wit: on the seventh day of April in the year of our Lord one thousand eight hundred and fifty four, come the said defendants by their attorneys and file herein their amended Pleas, which are in the words and figures following, to wit:

In the Circuit Court of Cook County
Of the November Term in the year of our
Lord one thousand eight hundred fifty three

Cyrus S. Bradley and
John A. Norton

vs
Julius G. Lombard

Defendants amended Pleas filed
by leave of Court.

And the said Cyrus S. Bradley and John A. Norton by Miller and Fowler their attorneys come and defend vs when vs and say that they did not take the said one desk, one Register, one Relay, one Telegraph Key, one Round table, one Stove and pipe, Two chairs and one stool, one Telegraph Battery, one Tin Box, carrier post office delivery, all of the telegraph poles and wires in the County of Cook and attached to the office known as the southern Michigan Telegraph office in the County of Cook, in the declaration aforesaid, above mentioned, in manner and form as the said plaintiff above against them hath declared, and of this they put themselves upon the country.

And the said Cyrus S. Bradley and John A. Norton further come and defend vs when vs and say, that the said plaintiff ought not to have and maintain his aforesaid action thereof against
the said

the said defendants, because they say that at the time when the taking of the said one desk, one Relay, one Telegraph Key, one Round table, one Stone and pipe, two chairs and one stool, one Telegraph Battery, one tin box called Post office delivery, all of the Telegraph poles and wires in the County of Cook, and attached to the office known as the Southern Michigan Telegraph office in the County of Cook is supposed to be, the property of the said goods and chattles was in the Southern Michigan Telegraph Company to wit. at the County of Cook aforesaid without that, that the said plaintiff was then lawfully entitled to the possession of the same, as he by his writ and declaration supposes.

And to have a return of the said, one desk, one Relay, one Telegraph Key, one Round table, one Stone and pipe, two chairs and one stool, one Telegraph Battery, one tin box called Post office delivery, all of the Telegraph poles and wires in the County of Cook and attached to the office known as the Southern Michigan Telegraph office in the County of Cook, in the declaration above mentioned the said Cyrus P. Bradley and John A. Norton well avow the taking of them as aforesaid, and justify, because they say that the said Cyrus P. Bradley being then and ever since Sheriff of the County of Cook, and the said John A. Norton being then and ever since a deputy Sheriff of said County as aforesaid, and by virtue of a certain writ of attachment sued out by one Julius Q. Sumbard against the said Southern Michigan Telegraph Company, returnable

to the Circuit Court of Cook County on the third
Monday of November in the year of our
Lord one thousand eight hundred and fifty
three, they the said Cyrus P. Bradley and
John A. Norton did attach and take the said
one desk, one Register, one Relay, one telegraph
key, one round table, one stove and pipe, two
chairs and one stool, one telegraph battery one
tin box called Post office delivery, all of the
telegraph poles and wires in the County of
Cook and attached to the office known
as the Southern Michigan telegraph office
in the County of Cook, to wit, at Chicago
aforesaid on the seventeenth day of October
in the year of our Lord one thousand
eight hundred and fifty three as the
goods & chattels of the said Southern Mich-
igan telegraph company as they the said
Cyrus P. Bradley and John A. Norton might
lawfully do, by virtue of the said writ
sued out by the said Julius G. Lombard
as aforesaid.

Wherefore they pray judgment and
a return of the said goods & chattels herein
before mentioned to be adjudged to them
and for their damages & costs.

Wm. & Howle Defts attys

And afterwards, to wit, on the sixth day of May
A.D. 1854 comes the said plaintiff by his attorneys
and files herein his replication to the said defendants
amended pleas heretofore filed in this cause, which is
in the words and following viz:

Cook County Circuit Court
May Term A.D. 1855

James H. Reed

vs
Cyrus P. Bradley &
John H. Norton

And the said plaintiff as to the said amended plea of the said defendants by them above pleaded saith that as & the said time when &c he the said plaintiff was lawfully entitled to the possession of the said goods & chattels in the said declaration mentioned & this he prays may be enquired of by the Court.

Hoynes & Miller Plffs. attys.

And the said plaintiff as to the said averment of the said defendants by them above made saith that the said defendants by reason of any thing in that averment by them above alleged ought not to aver the taking of the said goods & chattels in the said declaration mentioned in the said plea in which &c & justly &c because he saith that at the said time when &c he the said plaintiff was lawfully entitled to the possession of the said goods & chattels in the said declaration mentioned, and that he is ready to verify - wherefore inasmuch as the said defendants have above acknowledged the taking of the said goods & chattels in the said declaration mentioned in the said plea in which &c he the said plaintiff prays judgment & his damages by reason of the taking & unjustly detaining the same to be adjudged to him &c

Hoynes & Miller
Plffs. attys.

And afterwards to wit on the Eleventh day of December in the year of our Lord one thousand eight hundred and fifty four - the same being one of the days of the regular November Term of our said Circuit Court for said year, - the following proceedings were had and entered of record in this cause in said Court, viz;

207 James H. Read Replevin
vs
Cyrus P. Bradley &
John W. Weston

This day again came the said parties by their attorneys and issue being joined herein this cause is submitted to the Court without the intervention of a jury, and the Court having heard the testimony of witnesses and arguments of counsel takes the matter at issue under advisement.

And afterwards to wit on the Fourteenth day of December in the year last aforesaid - the same being one of the days of the said November term of said Court - the following proceedings were had and entered of record in this cause viz;

207 James H. Read Replevin
vs
Cyrus P. Bradley &
John W. Weston

This day again came the said parties by their attorneys and the Court being now fully advised upon the matter at issue between the said parties, finds the first issue for the plaintiff and

and on the record issue for the defendants
and further orders that each party pay one half
of the costs of this suit.

Therefore it is considered that
the said plaintiff do have and recover of the said
defendants one half of the costs and charges about
this suit expended and have execution therefor.

And it is further ordered and considered that
the said defendants do have and recover of the said
Plaintiff one half of the costs in this suit herein
expended and have execution therefor.

And afterwards to wit on the sixteenth day
of December in the year last aforesaid, the same
being one of the days of the November term of
our said Court, the following proceedings were had
and entered of record in this cause to wit;

207 James H. Read }
vs } Replevin
Cyrus B. Bradly }
John A. Norton }

This day again came the said
parties by their attorneys and it is ordered by the
Court that the said defendants have return of the
property repleined and that a writ of Returno
Habendo issue therefor.

And afterwards, to wit; on the third
day of January in the year of our Lord
one thousand eight hundred and fiftyfour,
the same being one of the days of the Nov-
ember term of our said Circuit Court for
the year A.D. 1854 - the following proceedings

were had and entered of record in this cause viz,

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1
James H. Read
vs
Cyrus P. Bradley &
John A. Norton } Replevin

This day again comes
the said Plaintiff by his attorney and friends
and appeals in this cause to the Supreme Court
of this State,

And afterwards to wit on the fourth day of
January in the year last aforesaid comes the
the said parties and file herein their certain
stipulation which is in the words & figures follow-
ing viz:

Cook County
Circuit Court
James H. Read

vs
Cyrus P. Bradley &
John A. Norton } This hereby stipulated
that plaintiff have thirty days from the last
day of present term of said Court within which
to file bill of exceptions and perfect appeal in
the above entitled cause -
Chicago January 4th 1855 Miller & Fowler

Deft's attys
And afterwards, to wit, on the fourteenth
day of February in the year last aforesaid, comes
the said parties and file herein their certain stipu-
lation which is in the words and figures following
viz,

Cook County Circuit Court

James N. Read
vs
Lynn P. Bradley &
John N. Norton

It is stipulated that the time
to file bill of exceptions in this cause be extended
to the 21st instant.

Chicago February 12, 1855

Willis & Fowler

Defts attys

And afterwards to wit, on the twentieth day of
of February in the year last aforesaid comes the said
plaintiff by his attorneys and files herein his certain Bill
of exceptions, which is in the words and figures following

Cook County Circuit Court,

James N. Read

vs
Lynn P. Bradley &
John N. Norton

The above cause came on
for trial on the day of December A.D. 1854. at
the November term of said Court, and the parties
plaintiff and defendants, appearing by their respective
counsel a jury was waived and the cause was
tried by the Court.

The taking of the property described
in the declaration was admitted by the defendants
with an avowry that that they took it as the
property of the Southern Michigan Telegraph Company,
by virtue of a writ of attachment issued out of the
Cook County Circuit Court, at the suit of Julius B.
Sombard against said said company and
that at the time of such taking it was the
property of the Southern Michigan Telegraph
Company. Thereupon the plaintiff offered ^{in evidence} and

act to incorporate the Southern Michigan Telegraph Company
act entitled an ~~act~~ ^{act} passed by the
Legislature of the State of Michigan and
approved April 2nd 1850.

as contained in the session laws of Michigan of 1850 page 350
which said act is in the words and figures following
to wit:
^{An Act to Incorporate the Southern Michigan Telegraph Company}
Section 1. Be it enacted by the Senate and House of Repre-
sentatives of the State of Michigan. That Alva Strong,
^{James R. Shufeldt, Henry O'Reilly, Harry Ely, Albert McInnis}
^{George Dawson, Harrison Dwight, Lewis Barnes, Henry}
Barnes, Phineas Norman, Elton W. Hudson, and Josiah
Snow, and all others who are or may become associated
with them in the Southern Michigan Telegraph Company,
he and the same are hereby constituted a body politic &
corporate for the purpose of constructing and owning a line
or lines of telegraph from the City of Detroit to Monroe
and Chicago, with the right to establish branches
thereto, and said corporation shall have perpetual
succession.

Sec. 2. The capital stock of said company shall not
exceed one hundred and fifty thousand dollars, and shall
be divided into shares of fifty dollars each which stock
shall be transferable under such regulations as may
be provided by the by-laws of said company.

Sec. 3. Said corporation are hereby empowered to
purchase, have and to hold, lease and enjoy to
themselves and their successors, real estate in such
city, town or village, as they may deem to be
interest of the company, for the erection of
suitable buildings for telegraphic purposes; to sue
and be sued, plead and be impleaded in all courts
of this State; to have and use a common seal,
and to ordain and put in execution such by-laws
for the government of said corporation and
the transaction of its business as may be necessary

amount' and the word "child" between the 66th and 67th
lines, the words "one child" between 68th and 69th lines,
the words "on whole amount due, and the balance of
said sum in three years from date hereof" between
the 70th and 71st lines, the words "with interest thereon"
between the 71st and 72^d lines, and the words "first
payment of" between 72 and 73 lines, having been
interlined previous to signature,

to carry out the true intent and meaning of this act, and for no other purpose: Provided, They are not repugnant to the laws of this State and the Constitution of the United States; And provided further, That all the real estate held or proposed by said corporation shall at all times be subject to taxation in every respect, the same as the real estate of an individual; and this shall not be construed so as to exempt said corporation from the payment of any specific tax for which they may be liable, but such specific tax shall be in addition to, and besides any and all taxes on real estate.

Sec. 4. The annual election for officers of said corporation shall be held on the first Monday of January of each year. The members (number) of directors of said corporation shall not be less than five nor more than thirty, who shall hold their offices for one year, or till their successors are elected. The directors so elected shall appoint a president, secretary and treasurer, who shall hold their offices until removed by the board of directors. Each share of stock shall be entitled to one vote.

Sec. 5. This act shall take effect and be in force whenever the secretary of the Southern Michigan Telegraph Company files in the office of the Secretary of State an acceptance of this act.

Sec. 6. Said Southern Michigan Telegraph Company shall be subject to all the provisions of "an act" authorizing any persons to construct lines of electric (electric) telegraph in the State of Michigan, approved January 28th, 1847 (so far as the same are applicable) and the same are hereby made a

part of this act,

Sec. 7. The Legislature may at any time alter, amend or repeal this act, — Approved April 2, 1850

And the said act being received in evidence the plaintiff called

George Allen — who being duly sworn testified as follows. I am acquainted with the plaintiff in this suit James H. Read. He resides in Providence Rhode Island. I was elected secretary of the Southern Michigan Telegraph Company on the 5th of April A.D. 1853 on the day of the date of the mortgage now shown to me.

The seal attached to the mortgage is the corporate seal of the company — and I was present and witnessed the execution of the mortgage by George A. Coe who was then the President of the company, and I saw him sign the mortgage as the President of the Company.

The mortgage was then and on the same day it was executed delivered by the President of the company to P. L. Green, the attorney of the Mechanics and Manufacturers Bank of Providence Rhode Island, and I subsequently received the mortgage from Mr. Read the mortgagor while I was also secretary of the said Telegraph Company.

Here the plaintiff offered in evidence the mortgage referred to by the witness, which is in the words and figures following —

This Indenture made the fifth day of April A.D. 1853 between the Southern Michigan Telegraph Company party of the first part and James H. Read of the City of Providence in the State of Rhode Island party of the second part. Witnesseth,

Whereas the lines of telegraph belonging to the party of the first part in Michigan, Indiana, and Illinois are greatly out of repair & portions of the same are either entirely destroyed or in a dilapidated and ruinous condition and other portions have been sold under judgments obtained against said party of the first part or others; and whereas said party of the second part proposes to advance the necessary means not exceeding five thousand dollars & to take possession of and to rebuild, or repair and put in good order said lines of telegraph or such portions thereof as may be deemed advisable, and to remove such liens and incumbrances as may exist upon and against said line or any portions thereof as he shall deem advisable, and to put the same in good working order, and whereas said party of the first part proposes to secure said party of the second part for all such advances and expenses incurred or paid by him in accomplishing the objects aforesaid. —

Now therefore the said party of the first part for and in consideration of the premises, and one dollar to them in hand paid, do hereby sell and transfer to the said party of the second part, their entire line or lines of telegraph owned by them, extending from Detroit in the State of Michigan to Adrian in the same State, and from and from the City of Monroe to the City of Chicago through portions of the States of Michigan, Indiana & Illinois, together with all their poles, wire, fixtures, insulators, and all property, Machinery, fixtures and instruments of any kind belonging to said party of the first part, wherever the same may be, and all money or claims due to said party of the first part of any name or kind, whatsoever — Upon the condition however, that if said party of the first

part shall well and truly pay or cause to be paid
to the said party of the second part the just and full
sums which may be paid or advanced by him in re-
building and putting said Lines of Telegraph or such
portions of them as he may see fit in good repair and
in the purchase of all necessary and proper instruments
for working the same and all other costs and expenses
of working and managing said Lines of Telegraph
and all sums which he may have to pay by reason
of his possession and management thereof, and also
all sums which said party of the second part may
at any time pay for taxes against the Company, or
in defending suits against said Company or in
the purchase of any just claims against the
Company or in repurchasing any part of said
Lines or any property of said party of the first part,
which may have been sold or incumbered, or
the title thereto impaired, incumbered, or rendered dou-
btful, together with interest at the rate of ten
per cent per annum from the respective time or times
when said monies shall be paid or advanced, within
four years from the ~~fourth~~^{first} day of May A.D. 1853
as follows: one fourth and the interest on the
whole sum due on the first day of May A.D.
1854, One fourth ~~and~~ with all interest due on
the first day of May A.D. 1855, one fourth on the
first day of May 1856, and the balance on the
first day of May A.D. 1857 without default or
delay, then this sale and transfer shall be void
and of no effect. - And for the purpose of more
fully securing the payment of such sum or sums
of money to said party of the second part,
it is hereby agreed that said party of the second
part shall & may, and is hereby authorized at any

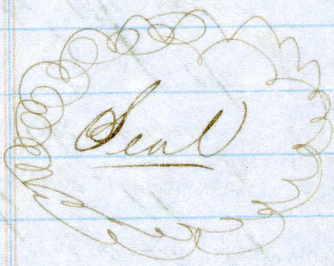
time, to enter upon and take entire possession and control of all said lines of Telegraph and of all said instruments, property and effects and demands aforesaid, belonging to said party of the first part, and to proceed to rebuild repair and put the same or such portions thereof as may be deemed advisable in good order and to perfect the title thereof at the expense of the said party of the first part, and so to have and hold possession and the entire control and management thereof, until said party of the second part is fully paid all sums of money and interest thereon for the security of which this instrument is executed, it being however understood and agreed that the said party of the second part shall be bound to apply all the profits derived from said lines of Telegraph over and above the necessary and proper expenses for operating and managing and keeping the same in repair and all other expenses taxes and payments in payment of said sums to be advanced by him and the interest thereon.

And it is further agreed that in case the first payment of principal and interest hereby secured to be paid shall not be made when the same falls due that the whole sum hereby secured to be paid shall fall due and the said party of the second part may proceed to sell said lines of Telegraph and all the instruments fixtures and property connected or used therewith at public Auction, first giving notice of such sale by publishing the same once in each week for three successive weeks in one news paper published at each of the following places to wit, Detroit, Adrian and Chicago, and may apply the proceeds of said sale in the payment of,

the sums due to him and hereby secured to be paid rendering the balance if any to the said party of the first part. And the said party of the first part hereby covenants and agrees to pay to the party of the second part or his assigns all such sums of money so advanced, with interest at the rate of ten per cent per annum at the time or times herein provided,

It is understood and expressly agreed that the party of the second part or his attorney or agent, may sue for collect, settle or compromise on such terms as he or they may deem for the interests of the Company any sums due or claimed to be due to it and hereby sold to the party of the second part,

In witness whereof the party of the first part has, by resolution of its Stockholders, at a meeting held pursuant to legal notice at Adrian in the State of Michigan April 5th 1853 caused these presents to be signed by their President and attested and countersigned by their Secretary, and their Corporate Seal to be hereunto affixed this fifth day of April A.D. 1853.



Geo. A. Lane. Pres.

Attest George Allen Secy.

The word "take" having been interlined in the 14th line, the word "such" erased and the word "any" interlined in the 18th line, the words "and management" erased in the 46th line, the figures 1854 erased in the 59th line, and the terms of payment altered from three years to four payable one quarter of principal and interest on whole sum unpaid annually instead of one third and interest

And thereupon the defendants by their counsel objected to the introduction of such mortgage in evidence on the ground that ~~such~~ ~~mortgage~~ the same had not been executed and acknowledged as required by the laws of the State of Michigan, the objection was overruled and the mortgage was read in evidence to which ruling of the court the defendants by their counsel then and there duly excepted.

Said witness thereupon further testified as follows. I was Secretary of the Southern M. Telegraph Company on the fourth of August A.D. 1853, and was present and witnessed the execution of the paper writing now shown to me the seal attached thereto is the corporate seal of the company, and and I saw George A. Coe the President of of the company sign the same as such President, and the signature of the Secretary thereto is my signature and was written by me at the time, This paper was executed on the day it bears date and was delivered by the President of the Company on the day of its execution to me as the agent of ~~Wm~~ W. Reed. The witness was then and at the time of issuing this replevin secretary for said Company.

The paper writing referred to by the witness was then offered in evidence, and is in the words and figures following. ^{here insert the mortgage}

This Indenture made the fourth day of August A.D. 1853 between the Southern Michigan Telegraph Company party of the first part, and James W. Reed of the City of Providence in the State of Rhode Island party of the second part, - Witnesseth

Whereas the said party of the first part did on the fifth day of April A.D. 1858 at a legal meeting of the Stockholders of said Company legally and truly execute unto the said party of the second part a certain mortgage deed of the lines of Telegraph - belonging to the said party of the first part in the States of Michigan, Indiana and Illinois upon certain conditions and premises mentioned in said mortgage deed among which were the following, namely:

Whereas the line or lines of telegraph belonging to the party of the first part in Michigan, Indiana and Illinois are greatly out of repair and portions of the same are either entirely destroyed or in a dilapidated and ruinous condition and other portions have been sold under judgments obtained against said party of the first part or others, and whereas said party of the second part proposes to advance the necessary means not exceeding five thousand dollars and to take possession of and rebuild or repair and put in good order said lines of telegraph or such portions thereof as he may deem advisable and to put the same in good working order and to remove such ~~lines~~ or incumbrances as may exist upon and against said line or any portion thereof as he may deem advisable, - and whereas the said party of the second part has now expended the said sum of five thousand dollars, in repairing and rebuilding portions of said telegraph lines, and in purchasing removing and settling claims against the same, and whereas the said sum of five thousand dollars has proved insufficient, is expended to complete all the repairs and rebuilding which are deemed advisable and necessary to said lines of telegraph, by both parties hereto, and whereas the said party of the second part proposes

to advance such additional sum not exceeding two thousand dollars as he may deem necessary and expedient to be expended in rebuilding and repairing said lines of telegraph or any portion thereof or in settling removing or compromising any just claims against the same; Now therefore in consideration of the premises and one dollar to them in hand paid the said party of the first part do hereby sell and transfer unto the said party of the second part their entire line or lines of telegraph belonging to them extending from Detroit in the State of Michigan to Adrian in the same State and from the City of Monroe to the City of Chicago through portions of the State of Michigan, Indiana and Illinois together with all their poles wire fixtures Insulators and all property including machinery and instruments of any kind belonging to said party of the first part whenever the same may be and all money or claims due to said party of the first part of any nature or kind whatsoever subject only to the terms and conditions of the afore mentioned mortgage executed as aforesaid on the fifth day April A.D. 1853.

Upon the condition, however, that if the said party of the first part shall well and truly pay or cause to be paid unto the said party of the second part the said sum of two thousand dollars or such portion thereof as said party of the second part may deem it necessary or advisable to expend in repairing or rebuilding said line or lines of telegraph or any portion thereof and putting the same in good working order, or in compromising or paying any just claims against said line of telegraph of any description whatsoever within the term of three years from date hereof with interest

thereon at the rate of 10. per cent. per annum namely one third of said sum so expended with interest on whole sum due for one year from date hereof, one third of said sum so expended in two years from date hereof with interest on whole amount then due and the balance of said sum in three years from date hereof with interest thereon, then this sale and transfer shall be of no effect and void.

And it is further agreed that in case the first payment of principal and interest hereby secured to be paid shall not be paid when the same falls due that the whole sum hereby secured to be paid ^{shall} ~~falls~~ due, and the said party of the second part may proceed to sell said lines of telegraph and all the instruments fixtures & property connected or used therewith at public auction first giving notice of such sale by publishing the same once in each week for three successive weeks in one newspaper published in each of the following places namely Adrian, Detroit and Chicago, and may apply the proceeds of said sale in payment of the sums due to him and hereby secured to be paid, rendering the balance if any to said party of the first part, And the said party of the first part hereby covenants and agrees to pay to said party of the second part or his assigns all such sums of money so advanced with interest at the rate of ten per cent per annum at the time herein provided. In witness whereof the party of the first part has by resolution of its stockholders at a meeting held pursuant to legal notice Coldwater in the State of Michigan on the fourth day of August A.D. 1853

caused these presents to be signed by their president and attested by the Secretary and their Corporate Seal to be hereunto affixed this fourth day of August A.D. 1853 -

Attest George Allen Secy. - Geo. A. Coe President

The words "with interest thereon at the rate of ten per cent per

the defendants Chapman objected to the introduction of the same in evidence, on the ground that the same had not been executed and acknowledged as required by the laws of the State of Michigan which objection was overruled and the same was received in evidence to which ruling of the Court the defendants by their counsel then and there duly excepted.

The said witness Chapman further testified as follows,

I was employed by Mr. Read about the first of March A.D. 1853 to come to Michigan for the purpose of taking charge of the property of the said Telegraph Company as the agent of Mr. Read and to rebuild and repair the line in case the terms proposed by Mr. Read to the said Company were agreed to. I took possession of all the property of the company mentioned in said Mortgage as the agent of Mr. Read, under the first Mortgage in the course of two or three weeks after its execution and as soon as I could learn from Mr. Read that he had accepted of the first Mortgage at the time I took possession of the property as the agent of Mr. Read there was only about thirty miles of the line capable of being operated being between Adrian and Monroe in the State of Michigan. Some portion of this line had been sold under executions against the Company and the remainder of the line was very much out of repair and incapable of being worked. The line originally extended from Monroe & Detroit Michigan by the way of Adrian to Chicago. That portion of the line lying within

the limits of the County of Cook Illinois had been sold or execution against the Company and taken away. Mr. Read advanced to me for said Company under the first Mortgage Five Thousand Dollars including the wire he purchased in New York and sent to me, with the money received by me from Mr. Read and with the wire furnished me by him I reconstructed a portion of the line of the Company and repaired that part of it which needed repairs at the time of the execution of the second Mortgage. I had reconstructed and repaired the line of the Company to a point somewhere between South Bend and LaPorte in the State of Indiana near LaPorte I think, Mr. Read advanced to me for said Company under the second Mortgage Two Thousand Dollars including wire which he purchased in New York and sent to me for said company, with this money and with the wire sent to me by Mr. Read I constructed the line from LaPorte Indiana to Chicago or to a point near Chicago for said Company - Mr. Read made other advances to me for said Company which were secured by a subsequent mortgage executed by the Company in April A.D. 1854 with which the reconstruction of the line was entirely completed.

It was finished the 17th of September A.D. 1853, during all this time I was the acting secretary of said Company. A portion of the wire with which that part of the line of the Company lying within the limits of the County of Cook was reconstructed by me was sent to me by Mr. Read, and all of the materials with

live lying within the
which that part of the limits of the County
of Cook was reconstructed including the property
taken by defendants was either sent to me by
Mr. Read or purchased by me with money
sent to me by him for said Company.

At the time of the taking of this property by
defendants I was in possession of this property,
and all the property of the Company as the agent
of Mr. Read and was also acting Secretary of
said Company and had been in such pos-
session and acting as his agent and was also Sec-
retary of said Company directing and manag-
ing its business since I first took possession
some three weeks after the execution of the
first mortgage. At the time of the taking
of this property by the defendants, the exclusive
possession of the property has never been delivered
or given up to the company but was retained by me
as the agent of Mr. Read, & I was also secretary
of the Company attending to its business. From
the time I first took possession of the property of
the Company until the 14th of November A.D. 1834,
I worked and operated the line of the Company, as
the agent of Mr. Read and charged him with
disbursements and the Company ^{in no way} interfered with
my management and control of the property
as the agent of Mr. Read.

Being cross examined by depts counsel he says -
I was elected Secretary of the Company at the time
the resolution was made by the directors authorizing
the execution of the first mortgage which was the
day preceding its execution. I was elected as sec-
retary as it was supposed I should be better acquainted

with its affairs while acting as the agent of Mr Read, in repairing the line - Mr Read, was not present when I was elected secretary. He was not present at the execution of the mortgage. It was understood that I should be elected secretary of the Company and if the Company and if the Company should execute satisfactory papers to Read he was to advance the money and I was to act as his agent in repairing the line. - I came out from Providence for the purpose of effecting such an arrangement for Read. I was a stockholder otherwise I was not eligible to the office of Secretary. The Bank aforesaid transferred some stock to me. I as the agent of Read as soon as the mortgage could be sent to Read for his acceptance and return. I should say that it was within a month after the execution of the mortgage that I took possession for Read. About 30 miles of the line was then in working order in the State of Michigan. There was no wire in this State (Illinois) no office in this town (Chicago) no Battery and no line in operation here. The seal was affixed to the mortgage the day after the Board of Directors authorized the conveyance and the day after the date of the mortgage Mr. Green took the mortgage and Mr. Read afterwards forwarded it to me - Read was then President of the said Mechanics and Manufacturers Bank, and the said Bank at that time owned between five hundred and forty or five hundred and fifty shares of the stock of the Company amounting in all to some \$27000. I received a portion

0
of the advances made by Mr. Read in money from him, and the balance in drafts made by me upon him. I do not know that the Bank furnished any of the money sent by Mr. Read, or paid any of the drafts, -

Questioned by the Court -

I kept with Mr. Read a regular account of the advances made by him and of the amount received in operating the line - In my transactions as the agent of Mr. Read, in operating the line I signed receipts and executed all papers in his name and as his agent and it was known by those acquainted with the affairs of the line, that I was in his possession as his agent. - In June 1854, there had been paid to Mr. Read on the first mortgage from the earnings of the line \$1818.73 which is thereon endorsed, and on the third mortgage \$1975.00 which is also endorsed thereon. I do not know whether the Bank has paid up on all third stock or not - And being further cross-examined by drafts counsel he says,

I do not know whether Read owned any stock at the time of the execution of the first mortgage - Read is a stockholder in the Bank. - I do not know anything of Mr. Snows operations with the Bank or the telegraph line. I never knew Snow or his brother, - I don't know that the Bank advanced the money to put up and repair the line, but believe it came through the Bank some way. - I kept possession of the line to June 1st 1854. - I may have advertized in the name of

the Southern Michigan Tel. Com. as that was the name of the line. A young man by the name of Batch operated the line here. I hired him for Read. (Paper shown to witness, circular of M. S. Telegraph, leg) Batch was authorized to issue such a circular as that. It was issued by my authority. I think I drew it up - at the time of the issuing of the second mortgage the line had not been put ^{up} in this County - The property of the company has not been sold under either of the mortgages. I was secretary of said Telegraph Company until June last & kept the accounts between Read and said Company - I have Company books &c - Here the Plffs rest.

And defendants then read the following circular in evidence to wit:

Circular. To the Merchants & Public Generally of Chicago.

The Southern Michigan Telegraph Company, respectfully announces to the citizens of Chicago, that they have just completed a line of telegraph from Toledo & Monroe, to Chicago over the route of the S. M. Railroad.

The new line has been erected in the most thorough and workman like manner, with substantial and lofty poles, and the most approved description of insulators and wires.

No expense has been spared to secure competent and reliable operators in the several offices along the line, and the best description of instruments and Batteries have been supplied to them, securing a sufficient and uniform supply of the electric fluid in all conditions of the atmosphere. The various

improvements thus combined, are announced to the public in the confidence that expectations founded upon them will not be disappointed upon trial.

Our connections made with Lines extending East and South to the great cities, are reliable and well established in the confidence of the communities they serve.

Extensive and thorough repairs of the Line extending from Toledo to Pittsburgh, and thence to New York, have been made the present season, in anticipation of the connection now offered with the "Great City of the West."

The connection at Buffalo is also in good condition, thus affording a double Line from Toledo to New York. All these arrangements have been completed with a view of securing to business men both East and West, a telegraph communication in its every department, worthy of the confidence and patronage of the public.

The Southern Michigan Telegraph Company have no connection with any other Line from Lake Erie to Chicago, and, while they seek a magnanimous rivalry will never become parties to any combination or monopoly.

In order to prevent misunderstanding on account of the corporate name of the Company being the same as that of the Great Rail Road Route they occupy, it may be proper to state, that, while the most amicable arrangements have been concluded between the two Companies (one of which provides for keeping the line in order, by Rail Road repairs,) the Rail Road and Telegraph are two distinct Companies.

The office of the S. M. T. Company is located at No 53 Clarke Street, ground floor, next south

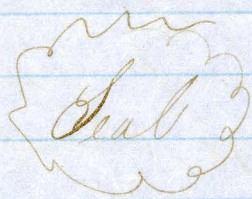
of the Post Office, and we hope by unremitting attention to business to secure a generous share of your patronage, - G. W. Balch, Manager Chicago Office. - Chicago Sept. 26. 1853.

And also introduce & read in evidence the writ of attachment, sued out of the Cook County Circuit Court and dated on the 15th day of October A.D. 1854 which is in the words and figures following, -

State of Illinois /
Cook County p. The People of the State of Illinois, to the Sheriff of said County - Greeting;
Whereas Frank Lombard Agent of Julius S. Lombard hath complained on oath to Louis D. Howard, Clerk of the Circuit Court of Cook County, that the Southern Michigan Michigan Telegraph Company are justly indebted to the said Julius S. Lombard in the sum of four hundred ninety three dollars and fourteen cents, and oath having also been made that the said Southern Michigan Telegraph Company resides out of this State, so that the ordinary process of law cannot be served upon it but has property and effects within this State, liable to attachment;

And the said Julius S. Lombard having given bond and security according to the act in such cases made and provided; He therefore commands you, that you attach so much of the estate, real and personal, of the said Southern Michigan Telegraph Company to be found in your County, as shall be of ^{value} sufficient to satisfy the said debt and costs, according to the said complaint, and such estate, so attached, in your hands to secure, or so to provide that the same may be liable to further

proceedings thereupon, according to law, at a term
of the Circuit Court, to be holden at Chicago, within
and for the county of Cook, on the third Monday
of November next; so to compel the said Southern
Michigan Telegraph Company to appear and
answer the complaint of the said Julius S. Lombard
Witness Louis A. Hoard, Clerk of our
said Court, and the Seal thereof, at
Chicago, this 15th day of October
in the year of Our Lord One thousand
Eight Hundred and fifty three,



L. A. Hoard, Clerk

Also read in evidence the return endorsed on
said writ, in the words and figures following:-
I have executed this writ by levying upon the
following described property to wit: One desk, - one
Telegraph Key, - one Round Table, - one Stone and
pipe, - two chairs, one stool, - one Telegraph Battery,
one tin box marked post office delivery, all the
Telegraph Poles and wire belonging to the within
named telegraph company in Cook County, Octo-
ber 17th 1853, and on the 18th day of October 1853,
the above named property was taken from my pos-
session by the coroner of Cook County by virtue of a
writ of Replevin issued from Circuit Court of Cook
County, The president of the said Telegraph
company not found in my county, - C. P. Brad-
ley, Sheriff, - By J. N. Norton Deft.

It was admitted by the parties that the deft. Bradley
was at the time of said seizure of said property
was Sheriff of Cook County State of Illinois and
that the deft. Norton was his deputy and that
said Norton took said property on & by virtue
of said writ of attachment and that property

was in defendants possession under that levy of said writ when the plaintiff sued out his replevin writ in this suit & took the property from defendants by said writ of Replevin,

And the said cause being submitted to the Court upon the evidence aforesaid, the Court thereupon found and decided the issue upon the first plea for the plaintiff, and the issue on the second plea for the defendants gave judgment &c. thereon, and awarded a return of the property to the defendants, to which finding and decision by the Court the plaintiff by his counsel then and there duly excepted - and now prays that this his bill of exceptions may be signed and sealed & made a part of the record -

which is accordingly done. P. S. Morris Seal
Judge 7th Circuit

Afterwards, to wit, on the fifth day of February in the year of Our Lord One thousand Eight hundred and fifty five, comes the said plaintiff by his attorney, and files in the office of the Clerk of said Court his certain appeal bonds in this cause, which is in the words & figures following, to wit,

Know all men by these presents that we James W. Reedy and Emory Cobb are held and firmly bound unto Messrs P. P. Bradley and John A. Norton in the penal sum of one thousand dollars for the payment of which sum well and truly to be made ^{do hereby} bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated this 3^d day of February A.D. 1855,

The condition ^{of the above obligation} is such that whereas the

said Leys P. Bradley and John H. Norton
did on the 13th day of December A.D. 1854, at
the November term of the Cook County Circuit
Court render a judgment against the said James
H. Read in a certain action of Replevin then
pending in said court wherein the said James
H. Read was plaintiff and the said Leys P.
Bradley & John H. Norton were defendants, which
said judgment was for a return of the property
replevined and damages for the use of the
property from the time it was taken until re-
turn thereof shall be made from which judg-
ment the said James H. Read has prayed an
appeal to the Supreme Court of the State of
Illinois.

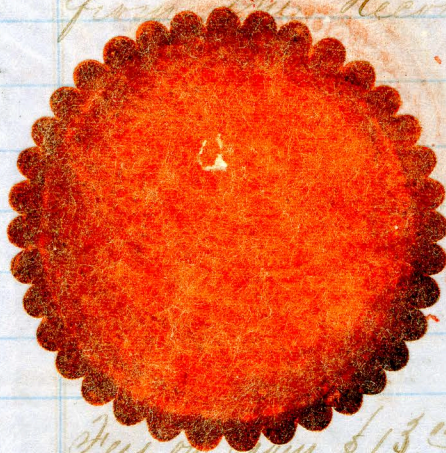
Now therefore if the said James H. Read
shall prosecute his said appeal with effect
and shall make return of said property, and
shall pay all costs of said suit and appeal,
interest and damages in case the judgment app-
ealed from shall be affirmed then the above
obligation to be void otherwise to remain in full
force and effect.

James H. Read Seal
p. Hyman Miller his attorney in fact
E. Cobb Seal

On the back of said bond is an endorsement
in the following words, to wit,
Security approved, B. A. Morris, Judge

State of Illinois
County of Cook:

I Louis A. Hoard Clerk
of the Circuit Court of the County of Cook in
the State of Illinois do hereby certify that the
foregoing is a full true and perfect transcript of
the Records and proceedings of the said Circuit
Court in the case wherein James H. Read is the
plaintiff and Cyrus P. Bradley and John
A. Norton are defendants as the same appears
from the Records & files now remaining in my



Per me, June 13th

In witness whereof I have hereunto
set my hand and affixed the
Seal of our said Court at
Chicago in said County this 5th
day of June A.D. 1855.
Louis A. Hoard
Clerk

And afterwards to wit, on the 12th day of June
in the year of our Lord one thousand eight hundred
and fifty five there was filed in the office of
the Clerk of the Cook County Circuit Court a
stipulation which is in the words of figures following
to wit:

County
Cook Circuit Court
James H. Read
vs
Cyrus P. Bradley &
John A. Norton

It is hereby stipulated

~~124~~ 34
Cook Co. Circuit Court

James H. Kent

vs.

Lyman S. Bradley
& John A. Norton

Deed

Filed June 19, 1855
S. Ireland Clk.

Rec'd 1855

One objection answers the assignment of error. The bill of exceptions does not show that A contains all the evidence in the case. It must appear in the bill of exceptions that A contains all the evidence, if that does not appear the Court will not reverse the judgment on the ground that the finding is against the evidence.

2nd Sears R 357.

2nd G. & R 389

3^d G. & R 292.

Again. The assignment of error is to the finding of the Court on the evidence. Now the plaintiff in error did not move for a new trial below. We understand the rule of law to be, that to bring a suit to the Supreme Court - for a reversal on account of the insufficiency of evidence in the Court below to sustain the ~~credit~~ decision, a motion should be made in the lower Court to set aside the finding as against evidence, and to grant a new trial; if the Court below omits such motion, and its decision is excepted to, the judgment-

may be assigned for error.

Bames v. Barber 1 Gill R 401.

Keper v. Mundy 19 Ohio R 298

5 Missour R 246

Gundard v. Eldridge

19 Miss R 326

I do not trouble the Court, with any further discussion - as I do not deem it necessary for the above reasons, to say how the Court did not err, in their finding admitting that the question can be examined in this case. Messrs Miller & Fowler the Attys for the defendants below have handed to me notes of points for a brief. It is unnecessary for the reasons I have given and therefore I make no brief in reference thereto as to any authorities.

Shumway & J. F. Wells

Attys for Defendant
in error

Miller & Fowler

Attys for Defendants
in error

34 127
C. P. Bradley et al
at

Las. H. Reads

Pliff for defendant
in error

H. G. Shumway

H. F. White

Mitche & Fowler
Defendants in
Error Allys

The Plaintiff ought not to hold the property under the mortgage of 5th April 1853

1 Because the mortgage was not properly in evidence -

There was no proof of authority in the President & Secretary to execute the mortgage & their Charter gives no such authority - See ~~former~~ Case -

No proof that the by Laws authorized them to execute -

No proof that the meeting of the Stock Holders referred to by Witness Allen was regular and legal -

There is no proof that the stockholders at that meeting authorized the President and ^{Secretary} ~~stockholders~~ to execute said mortgage - see Evidence of Allen -

2 Because the mortgage was not executed in accordance with the Laws of Michigan

The plaintiff cannot hold the line under the second mortgage for the same reasons as before -

They can hold it under neither mortgage for the reason that the property replevied was not the property of the Southern Michigan Telegraph Company at the time of executing either of the mortgages, ^{and the Plaintiff had no show of title to said property.} but subsequently and before the taking by the defendants it became the property of the Company -

If it was the Plaintiffs property at the time of the taking, independent of whatever title he might have acquired under the first two mortgages why does he attempt to hold it under said mortgages -

If it was his property and not the property of the Company why did the Company subsequently execute to him a mortgage of the same property taken under the attachment -

The plaintiff can claim no title to the line in Cook County by virtue of his redeeming it from those who held from the Sheriff's sale under execution.

Because Plaintiff was not a judgment Creditor when he redeemed the property and in law had no right to such redemption, but being one of the Company he must have redeemed for the Judgment Debtor.

Because his agreement to "remove such liens and incumbrances as may exist upon and against said line or any portion thereof" and to "settle remove or compromise any just claim against the same" was a part of the consideration of the mortgages; and acting thus under the mortgages, he must be considered to have done thus for and as the agent of the Company.

The property could not have been included in the mortgages because it was not in esse at the time of their execution; and the Pltff can not hold it under the third mortgage as against Defs, because the taking by the Defs was before the execution of the third mortgage -

Had the mortgagor intended to execute a mortgage of the property & replevied the mortgage could have acquired no title. Because the mortgage was not properly executed & recorded, and there was no delivery of the property to the mortgage at the time the mortgages were executed, the fact that the property was not in esse at the time rendering such delivery impossible -

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C. R. Woodlystone

at

Las. H. River

notes for a brief for

the Board.

Supreme Court of Illinois

James A. Read

- vs -
Levy P. Bradley
& John N. Norton

The Bill of Exceptions commences by stating that the Defendants admitted the taking of the property as the property of the Southern Michigan Telegraph Company & thereupon the Plaintiff offers in evidence an Act incorporating the Company -

After reciting the Act it then goes ^{on} and says. "And the said Act bring read in evidence the Plaintiff: called George Allen who being duly sworn &c" - After stating the Evidence given in his Examination in chief and also upon his Cross-Examination it states here the Plaintiff rests - It proceeds, the Defendants then read in evidence a circular which is set forth in the Bill of Exceptions. and that they also introduced and read in evidence the Attachment Writ and the return thereon both of which are stated and set forth in the Bill of Exceptions: then it states an admission made by the parties with reference to the taking of the Goods and concludes as follows:-

"And the case being submitted
"to the Court upon the Evidence aforesaid
"The Court thereupon formed and decided
"the issue upon the first plea for the Plaintiff
"And the issue on the second plea for the
"Defendants —"

The objection that the Bill of Exceptions
does not purport to contain all the Evidence
given upon the trial in the Court below
it seems to us is not well taken —

The Manner in which the evidence
is stated in the Bill of Exceptions clearly
shows that it was the intention of the Judge
who signed it and who tried the cause, to state
all the Evidence given on the trial material
to the issues. It purports to be stated in the
order in which it was introduced —

It seems to us that when the only Excep-
tion taken was the Exception to the final
decision of the Court upon the Evidence,
and the only object of the Bill of Exceptions
being to incorporate the Evidence in the
record in order that the Supreme Court
might review the judgment or decision of
the Circuit Court, there is a very strong
presumption that the Judge would be
careful to have introduced into the Record

all the Evidence given on the the trial
which would justify his decision -

But to render the fact, that all the
Evidence given on the trial is stated in the
Bill. conclusive, the Bill of Exceptions states
states expressly in so many words that the
Case was submitted to the Court upon the ^{Evidence} afforsaid. That is, upon the Evidence stated
and recited in the Bill of Exceptions - which
precludes, it seems to us, the possibility of a
presumption that any other Evidence was
given upon the trial than that stated in
the Bill of Exceptions - If the Bill had
merely stated that the Case was submitted
to the Court without stating upon what Evidence
it was submitted then the usual presumption
that the decision of the Court below was correct
would induce the further presumption that
other Evidence was given upon the trial below,
if that stated in the Bill does not justify the
decision of the Court - But this presumption
it seems to us is completely rebutted when the
Judge expressly states under his hand and
Seal that he made his decision upon the Evi-
dence stated and recited in the Bill of Exceptions
and the further statement that no further
Evidence was introduced is entirely unnecessary
for that follows as a matter of course, and it must

be true, else the Judge could not have founded his decision upon the Evidence stated in the Bill - The statement of a fact necessarily or even tacitly implied from what is expressly operated nothing, according to the well known Maxim: "Expressio eorum quae tacite insunt nihil operatur" - That other Maxim, "Expressio unius est exclusio alterius", is also applicable here -

We think therefore that no presumption can fairly be entertained from this Record that other Evidence was given on the trial material to the issues and upon which the judgment of the Court was given, than that stated and recited in the Bill of Exceptions -

The first case on this point is that of *Harmon vs Thornton*. 2 Scam. 354. - There the objection was made that it did not appear by the Bill of Exceptions that a certain Note was read in Evidence on the trial. The Court say, "It is a sufficient answer to this objection that the Bill of Exceptions does not state that all the testimony given by the Plaintiff is contained in the Bill - It also appears that the original Note was among the papers in the Suit and was consequently before the Judge on the trial" - It does not appear from the Report of this Case that the Bill of Exceptions purported to contain all the

Evidence given on the trial, and besides
the Court say that the objection should have
been made in the Court below by an objection
to the sufficiency of the Evidence, and it is
rather upon this latter ground that the decision
of the Supreme Court is made overruling the
objection made for the first time in that Court
to the sufficiency of the Evidence - This case
it seems to us is very far from deciding that
a distinct statement, in so many words, that
the Bill of Exceptions contains all the
Evidence given on the trial, is the only way
the Supreme Court can be informed of the
fact that they have all the Evidence before
them upon which the judgment of the Court
below was rendered - and that Equivalent
expressions or expressions which amount to
the same thing are not to be required -
The only inquiry is whether the Supreme Court
are sufficiently informed of the fact that they
have before them all the Evidence given
on the trial below - It is ~~not~~ necessary that
this information should come to them authen-
ticated by the hand and Seal of the Judge
who tried the Cause, but the particular language
or mode of expression by which this information
is conveyed is immaterial, provided the fact
is communicated with sufficient certainty -

In the next Case of Bates et al vs Balkley
2 Hill. 394. - The Court say that "the fact that
the Bill of Exceptions does not show that
it contains all the Evidence given on the
trial is conclusive against our reversing
the judgment of the Court below for overruling
the Motion for a new trial because its finding
was against evidence" - It does not appear
that the Bill of Exceptions purported to con-
tain all the evidence, and the Court decide
that admitting that they had all the Evidence
before them it justifies the decision of the
Court below - But we insist that within
the meaning of the rule of this Case the
Bill of Exceptions does show that it contained
all the evidence given on the trial in the
Court below, and that this fact plainly
appears on the face of the Bill -

In the next case of Granger vs Warrington
3 Hill. 299. The Court say on page 310. "As the
" whole of the Evidence is not stated to be contained
" in the Bill of Exceptions this Court has not
" the means of determining whether the Court
" below should have granted a new trial" -

In this Case it does not appear that the Bill of
exceptions purported to contain all the
Evidence, or that it in any manner appeared
to the Court that the Bill of Exceptions contained
all the evidence -

The Error is assigned in this Case under the 22nd Section of our Practice Act (Rev. Stat. 1845.) which provides that Exceptions taken to the opinions and decisions of the Circuit Courts upon the trial of Causes in which the parties agree that both matters of Law and of fact may be tried by the Court, and in appeal Cases tried by the Court without the intervention of a jury shall be deemed and held to have been properly taken and allowed and the party excepting may assign for error before the Supreme Court any decision or opinion so excepted to, whether such Exception relates to receiving improper testimony or rejecting proper testimony, or to the final judgment of the Court upon the law and evidence —

Without this Statute it is admitted that we could not assign as error the final judgment of the Court upon the issues as found either by the verdict of a jury or the decision of the Court upon the evidence. for the judgment must follow the verdict in the one Case and the finding by the Court in the other; and to raise the objection that the verdict of the jury or the finding by the Court is against the evidence, it is necessary to interpose a Motion for a new trial on that ground and to assign as Error the decision

of the Court in overruling the Motion —

But the 22nd Section cited removed entirely this necessity, and authorizes as to assign for error before the Supreme Court, the final decision or judgment of the Court below upon the law and evidence — We duly excepted to this decision at the time, and now say that the Judge erred in his finding upon the evidence and the law as applicable thereto the second of the issues for the Defendants.

To have moved for a new trial would have been simply to have asked the Judge to review a decision just made upon matters already before the Court, and upon which his opinion had already been given —

Where the Legislature have expressly provided that an exception to the decision of the Court relating to, or, which is the same thing, embracing the final judgment of the Court upon the law and evidence shall be deemed and held to have been properly taken and allowed, and that the decision so excepted to may be assigned for error before the Supreme Court — We do not see how the Supreme Court have not properly before them the question whether the Court below erred in his decision upon the evidence and the law as applicable thereto in finding the second of the issues for the Defendants — All of which is respectfully submitted.

Hoyne & Miller
Plffs. Atty

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Supreme Court
of Illinois

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Read
vs
Bradley

James H. Read

v

Cyrus P. Bradley
et al

Wm. Aycock

Filed June 26, 1888

L. Leland
Clerk

In Supreme Court
Cyrus P. Bradley et al

James A. Reed

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And then comes the defendant in
over and says that there is no error
in the record and proceedings &
judgment as assigned, in manner
and form as alleged. He therefore
prays that said judgment as aforesaid
in form as aforesaid, may be in
all things affirmed.

Wm. H. Forbes & Hummer & Wente
Attys for the defendant
in over

In Supreme Court

C. P. Bradley dec
vs

James W. Reed
Comida in error

Filed July 5, 1855.
L. Ueland Clk.

Supreme Court of
The State of Illinois

James H. Read
Appellant -
v.s.

Appeal from Cook County
Circuit Court -

Lyons P. Bradley &
John W. Norton
Appellees

And now comes the said appellant by
Haynes & Tension his attorneys and
says there is manifest error in the
records and proceedings in the Court
relating to this case -

The finding of the Court upon the issue
presented by the Appellants second answer
and plea savoring and the judgment
thereon rendered, in awarding a return
of the property in said declaration there-
against their respondents, was against
the evidence in the case and the law
as applicable thereto - and assigns
the reason for error -

Haynes & Tension

Attorneys for Appellant.

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Sup. Court of the
State of Illinois
— — —

James W. Read
Appellant -
v.s.

Leopold P. Bradley &
John W. Norton
Appellees
— — — — —

Assignment of Error.
— — —

Filed July 2^d 1855.
L. Seland Clk.

Hogan & Norton
Attys for Appellees

124 34
Jas. H. Read
vs
Cyrus P. Brady et al

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1856

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